

ELTON E. GITTEL AND
GERALD A. GITTEL ET AL.

IBLA 71-198

Decided May 4, 1971

Small Tract Act: Appraisals

Where the Secretary of Interior has remanded small tract offers to a hearing examiner for a recommended decision in order to ascertain the current value of the federal interest in the tracts, and all parties involved have acquiesced in the recommended decision, the cases will be remanded to the Bureau of Land Management for disposition as outlined in the recommended decision.

IBLA 71-198	:	Idaho 978, 980, 981
	:	
ELTON E. GITTEL AND	:	Appraised value for sale
GERALD A. GITTEL ET AL.	:	of small tracts established
	:	
BERT J. HUDSON AND	:	Decisions set aside
FRANCIS M. SMITH	:	and cases remanded
	:	
ARCHIE E. MCGREGOR, SR.	:	

DECISION

Elton E. Gittel and Gerald A. Gittel (Idaho 978, tract 37), Bert J. Hudson and Francis M. Smith (Idaho 980, tract 40), and Archie E. McGregor, Sr., (Idaho 981, tract 42) have appealed to the Secretary of the Interior from separate decisions rendered in March 1968, whereby the Office of Appeals and Hearings, Bureau of Land Management, affirmed separate decisions of the Idaho land office dated March 15, 1967. These decisions afforded appellants an opportunity to purchase the respective small tracts pursuant to the Small Tract Act, as amended, 43 U.S.C. 682a (1964), at sums which had been fixed by appraisal.

The records show that these tracts were a part of a 20-acre parcel designated as Lot 49 by a Government survey in 1904. Lot 49 was reserved for railroad station grounds for the Coeur d'Alene & Spokane Railway Company, the predecessor of the Burlington Northern, Inc., under the act of March 3, 1875, Ch. 152, 18 Stat. 482, as amended, 43 U.S.C. 934-939 (1964). The lands are situated entirely within the exterior boundaries of the City of Coeur d'Alene, Idaho. The appellants asserted on appeal that the original appraised values of the tracts were too high and there was no specific value assigned to the railroad's interest in the tract.

The right granted the railroad under the act of March 3, 1875, was an easement for railroad purposes; the fee or servient estate remained in the United States. Great Northern Ry. v. United States, 315 U.S. 262 (1942). The instant cases turn upon the fair market value of that servient estate.

By letter decision dated December 31, 1969, the Assistant Secretary of the Interior for Public Land Management found that because of the lapse of time since the appraisals were made, the appraisal data might not reflect the current values of the tracts. He also found that insufficient recognition had been given to the right of the railroad to utilize the land for station ground purposes. Therefore, cases were remanded for a hearing with the request that a recommended decision be submitted to the Assistant Secretary's office.

The record shows that these cases were consolidated for hearing. On June 3, 1970, a prehearing conference was held at Coeur d'Alene, Idaho. The appellants, their attorneys, representatives of the Idaho land office, and the attorneys for Great Northern Railway were present. All of the parties entered into a stipulation, thereby making a hearing unnecessary.

On November 18, 1970, a motion to remand was filed with the hearing examiner on behalf of the Idaho land office manager of the Bureau of Land Management. The motion provided as follows:

In accordance with the stipulations arrived at during the prehearing conference in Coeur d'Alene on June 3, 1970, an appraisal was made of tracts involved in this appeal. The appraiser found the value of tract 37 to be \$27,000, tract 40, \$55,000, and tract 42, \$58,000 as of June 30, 1966 and also as of October 1, 1970. The Bureau has found the appraisal to have been made in accordance with Departmental appraisal standards. A copy of the appraisal is submitted for inclusion in the record. The question of what date should be used to establish the fair market value of the tract is moot since the appraisal establishes the same value for either date.

Also, the Burlington Northern, Inc. has offered to sell to the occupying tenants its interest in tract 37 for \$4,900 tract 42 for \$12,000 and tract 40 for \$5,600. Under the circumstances it is concluded that it would be advisable to accept these values as establishing the extent of the company's interest in these tracts. The Bureau would thus make an appropriate reduction in the offering price of these tracts in disposing of the Government's interest in them.

Therefore, a motion is made to remand the cases to the Manager of the Land Office with directions to offer these tracts at the appraised price established by the aforementioned appraisal with a reduction in such appraisal of the interest of the Burlington Northern, Inc. as outlined above.

On February 1, 1971, a recommended decision was promulgated by the hearing examiner and sent to the Assistant Secretary of the Interior. The case records and recommended decision were referred to this Board for appropriate action.

Counsel for the Burlington Northern Inc. and Messrs. Bert Hudson, Francis Smith and Archie McGregor have filed letters supporting the motion and requesting that it be granted. No response or objection has been received from Messrs. Gittel. Accordingly, the motion is hereby granted.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decisions of the Bureau of Land Management appealed from are set aside and the cases are remanded to the Bureau of Land Management to offer tracts 37, 40 and 42 to the respective applicant-appellants at the prices established in the independent appraisal made as a result of the stipulations, with a reduction reflecting the amounts of the railroad's interest, as outlined in the motion.

Francis E. Mayhue, Member

We concur:

Frederick Fishman, Member

Newton Frishberg, Chairman.

